

Central Intelligence Agency



Washington, D.C. 20505

OLL 84-1388

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Mr. James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D.C. 20530

Dear Mr. Frey:

This letter is in response to your request for the views of the Central Intelligence Agency (CIA) on the Department of State's (DOS) report on H.R. 5197, Foreign Service Amendments of 1984.

Attached are CIA's comments on DOS's report on H.R. 5197. Additionally, a comment on DOS's views of the companion Senate bill, S. 1136, is also attached. For the most part, we support DOS's views on these bills. However, in two cases we differ with States' opinion and request that their report be modified accordingly.

We appreciate the opportunity to comment on this matter.

Sincerely,

/s/Charles A. Briggs

Charles A. Briggs
Director, Office of Legislative Liaison

Attachments

Distribution:

Original - Addressee
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H.R. 5197

Section 104 Employment of Family Members

This section would require "preferential consideration" rather than "equal consideration" for employment of Foreign Service family members at posts abroad . We support the State Department's position that "equal consideration" provides for more equitable treatment of all U.S. Government dependents abroad.

Section 121 Health Care

The main provision of this section authorizes the continued enrollment of former spouses of members of the Foreign Service in Government health insurance plans. To continue the enrollment, the former spouses would have to pay the full premium costs, employee plus Government share. We support the State Department's view that it would be better to incorporate this amendment into Chapter 89, Title 5, U.S.C., rather than the Foreign Service Act, thus facilitating the maintenance of the consistency of this provision with the Government-wide programs.

Section 125 Annuities for Former Spouses

This amendment would authorize pensions and survivor annuities to former spouses not covered by the Foreign Service Act of 1980. (Under existing law only former spouses divorced after 15 February 1981 are eligible for such benefits.) The cost would be funded by the Foreign Service retirement fund with no accompanying reduction in benefits to an annuitant.

We generally concur with State's comments and assessment of this particular section. While not opposed to the intent of the legislation, passage in this form would result in some inequities. The principal reason Congress did not make the original legislation retroactive was to avoid interference with completed divorce actions. While the amendment would not deprive affected annuitants of any part of their income, it could nonetheless affect completed divorce decrees by giving these annuitants grounds for reopening their divorce decrees in light of the spouse's improved financial circumstances. On the other hand, if prior court decrees or spousal support agreements are not renegotiated, a former spouse who is already receiving support deemed sufficient by a court or by the parties to the agreement would become entitled to more than a

court would deem appropriate. Under existing law, the provision making a former spouse's entitlement subject to modification by court order or spousal agreement avoids this problem. A possible solution might therefore be to require former spouses covered under the new legislation to elect between any existing spousal support payments and a federal annuity.

Section 203 Overseas Differential and Allowances

The purpose of this amendment is to allow advance payment of differentials, as is now the case for allowances. We agree with State's analysis that this would create extra cost and administrative problems and that the justification for advance payment of differentials is not as strong as that for allowances.

Section 205 Advance of Pay

This provision would allow employees to receive advances in pay upon assignment to a post in the U.S. from a post overseas. We believe this is most appropriate and disagree with State's view that there may be less financial difficulty upon transfer to the U.S. Employees returning to the U.S. from abroad can easily incur one-time expenses (e.g., security deposits, advance rents, home leave expenses) that are as burdensome as expenses found when assigned overseas.

S. 1136

Section 6(a)(7)(A). Former Spouse's Entitlement to Share in the Refund of Retirement Contributions (Discontinued Service Benefits).

We concur in State's endorsement of the provision imposing the same conditions to receipt of these benefits as attend pension rights; remarriage before age 60 should logically preclude sharing in all such benefits. However, we do not concur in that portion of the provision giving a spouse the same right to share in the refund as a former spouse. The latter's entitlement is predicated upon a need for support to which the former spouse would no longer have access following termination of the marriage absent a specific provision in law or court decree. A spouse, on the other hand, may be presumed to have access to the family income including any refund of retirement contributions. Specifying a pro rata share of a particular asset to which she should be entitled introduces an entirely new concept of spousal rights that should be carefully examined. Moreover, it should be pointed out that existing law (including the CIA Spouses' Retirement Equity Act) requires the spouse's notification and consent before a refund can be paid to or for the benefit of a participant. This provision in our view adequately protects the spouse's interest in the retirement contributions; if the spouse does not wish the refund to be paid in order to preserve his or her right to a survivor benefit, the spouse may withhold consent.